RECENT CASES.

BANKRUPTCY—AMENDATORY ACT OF 1903—PROVISION AGAINST RETROACTION—JURISDICTION FOR RECOVERY OF PROPERTY.—IN RE HARTMAN, 10 AM. B. R. 387 (D. C.).—Sec. 19 of the Amendatory Act provides that its own provisions shall not apply to cases pending when it takes effect. *Held*, that the amendment enlarging the jurisdiction of bankruptcy courts to include suits for the recovery of property, is confined to cases in which the original petition was filed after the amendment took effect, and Sec. 19 applies to all matters connected with a petition in bankruptcy as well as to the petition itself and the adjudication.

Contra: The provision against retroaction applies only to bankruptcy cases proper, and not to a suit brought by a trustee. *Pond v. N. Y. Exchange Bank*, 124 Fed. 992, 10 Am. B. R. 343. But *Re Hartman* seems to carry out the intention of the law more nearly, and agrees with the construction other courts are giving it. Thus, a proceeding under Sec. 57g to expunge a claim because of unsurrendered preference, in a case brought before the Amendatory Act took effect, must be governed by the original Act of 1898. *In re Docker-Foster Co.*, 10 Am. B. R. 584. The rule that the repeal of a statute prescribing a penalty or forfeiture recoverable in a civil action takes away the right of recovery (*Bay City Ry. Co. v. Austin*, 21 Mich. 390), is negatived by Sec. 19. So an unconditional transfer of real estate by a bankrupt for inadequate consideration is no concealment of property in cases begun prior to the amendments. *In re Dauchy*, 10 Am. B. R. 527.

BANKRUPTCY—DEPOSIT IN BANK—SET-OFF.—NATIONAL BANK V. MASSEY, 11 AM. B. R. 42 (SUP. CT.).—Money was deposited with a bank upon an open account subject to check, within four months prior to adjudication. *Held*, that such a deposit did not constitute a preference which must be surrendered before the claim of the bank against the bankrupt's estate should be allowed.

This case seems to be the first on this point under the Act of 1898. The decisions under the Act of 1867 permitted banks to set off their debts. *In re Petrie*, Fed. Cas. 11,040; *Scammon v. Kimball*, 92 U. S. 362. But it was urged that section 60 of the present act had changed the law. A payment of money being a transfer of property falls within the provisions of Sec. 60 of the Bankruptcy Act and constitutes a preference which must be surrendered before claim will be allowed. *Pirie v. Trust Co.*, 182 U. S. 438. But a deposit in a bank is a mere loan creating an obligation to repay upon demand. *Davis v. Bank*, 161 U. S. 288. The principal case holds that it is not a transfer of property. And therefore Sec. 68 applies, which provides that in all cases of mutual debts, one debt may be set off against the other.

BANKRUPTCY—INVOLUNTARY PROCEEDINGS—RECEIVER'S COMPENSATION—AGAINST WHOM TAXABLE.—MATTER OF SEARS, HUMBERT & CO., 10 AM. B. R. 389 (D. C.).—*Held*, that when a petition in bankruptcy has been dismissed, a

receiver previously appointed to seize and hold the property of an alleged bankrupt pending adjudication must restore such property to the person or corporation from whom it was taken, intact, and without any deductions for his services or disbursements. In voluntarily serving before the adjudication in bankruptcy, a receiver accepts this risk of loss if the proceedings be dismissed.

In this case the petitioners for a receiver were merely creditors, seeking security in property to which they had no other claim. True, when no question is made as to the legality and propriety of an appointment of a receiver, and he has closed up the business in pursuance of his appointment, his compensation should be paid from the funds in his hands. *Radford v. Folsom,* 55 Iowa 276. And when it becomes the duty of a court to take property under its charge, the property becomes chargeable with the necessary expense incurred in taking care of and saving it, including the allowance to the receiver for his services. *Ferguson v. Dent,* 46 Fed. 88. But a receiver irregularly and erroneously appointed cannot look for compensation to the funds placed in his hands, *French v. Gifford,* 31 Iowa 428, as that would be a taking of property without due process of law. So in the present case Referee Hotchkiss holds that to charge the alleged bankrupts with the expenses of seizing and administering their solvent estate against their will would be a greater injustice than to deprive the receiver of his return for voluntary services, though rendered in good faith.

BANKRUPTCY—PREFERENCES.—MCKENNY V. CHENEY, 11 AM. B. R. 54.—*Held,* Section 67f of the Bankruptcy Act of 1898, providing "that all levies, judgments, attachments or other liens, obtained against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed void in case he is adjudged a bankrupt," is applicable to cases both of voluntary and involuntary bankruptcy.

The decisions upon this question are very fully catalogued in this case. Some courts are of the opinion that to construe section 67f as applying to cases of voluntary bankruptcy would be to eliminate from the statute subsection c, which in terms apply to voluntary bankrupts. *In re O'Connor,* 95 Fed. 943. But by the slight weight of authority, the words "at any time within four months prior to the filing of a petition in bankruptcy against him" are to be construed as applying to voluntary as well as involuntary cases, in as much as section 1a, cl. 1, declares that "'a person against whom a petition has been filed' shall include a person filing a voluntary petition." *In re Dobson,* 98 Fed. 86; *In re Benedict,* 75 N. Y. Supp. 165.

BILLS AND NOTES—BONA FIDE HOLDER.—MECHANICS' BANK V. CHARDAVOYNE, 55 ATL. 1080 (N. J.).—*Held,* that a party who receives a negotiable note in payment of a pre-existing debt is a bona fide holder for value. Dixon, Garrison, Fort and Green, J. J., *dissenting.*

A purchaser of fraudulently obtained goods in settlement of a pre-existing debt is not a bona fide purchaser for value. *Sleeper v. Davis,* 64 N. H. 59. And in some States this has been held to be so in the case of negotiable instruments. *Button v. Rathbone,* 118 N. Y. 666. *Roxborough v. Messick,* 6 Ohio St. 448. It is sufficient for his protection, however, if the purchaser